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SEP 22 2006

Pogue et al.
Serial No.: 10/061,216
*Page 7 of 8***Remarks/Arguments**

Applicants have canceled claims 1-78, amended the claims 90, 92 and 95-97, and present the following remarks. Claims 78-99 are pending. Reconsideration of the rejection is respectfully requested.

Claims 92-95 were rejected under 35 USC 112, second paragraph as indefinite as to whether the sample is concentrated by the extraction or is already concentrated. Whether the sample is concentrated by the extraction is possible but not specified by the claim. What is clear is that the protein containing substance was previously concentrated in the aqueous phase before the organic solvent extraction. Claim 95 was also amended to correct an obvious typographical error.

Claims 79-99 were rejected under 35 USC 103 as unpatentable over Garger et al (any of the four) in view of Koprowski et al and Francon et al. Garger et al was cited to show a virus extraction and purification procedure from plants. Garger et al use a different PEG precipitation technique and (no salt) and do not use a final organic solvent extraction step. Koprowski et al was cited to show using salt with a PEG precipitation of virus. While neither reference uses organic solvents in their methods, reference was made in Garger et al to an earlier work by Gooding et al where organic solvents were used to treat unpurified plant homogenates before purification steps including PEG precipitation. From these, the examiner concludes the claimed method is obvious.

Claim 79 recites using PEG and salt precipitation before organic solvent treatment. The other independent claims recite that purification steps occur before organic solvent treatment. None of the references teach using an organic solvent after PEG precipitation or other purification. The only mention of using organic solvents in any of the cited references is as an initial treatment of plant homogenate before any purification.

Contrary to the examiner's assertion, "the sample" is NOT "treated the same way". The organic solvent is contacting a significantly different aqueous solution. In the prior art the organic solvent contacts unpurified plant homogenate for the purposes of removing plant components. By contrast, in the present invention, the protein containing material is already purified when the organic solvent is added. Thus, the organic solvent contacts the protein

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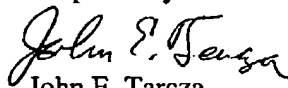
containing material rather than all of the plant components, which were removed earlier in the claimed process. Therefore, the event occurring in the claimed step is different.

Furthermore, this difference is not obvious because the purposes and results are different as stated in the previous responses. Additionally, a solvent extraction technique taught was taught to "eliminate chloroplast membrane fragments, pigments and other host related materials." (Garger et al, column 3, lines 49-51). In the present invention, these have already been removed by the purification procedure before the organic solvent is added. Therefore, the skilled artisan reading Garger et al (the Gooding et al teaching) would have no motivation to add this organic solvent extraction at the end of the claimed process.

The examiner has argued that the word "comprising" is open to additional steps and therefore the term "final" is not necessarily "final". Even if one accepts this interpretation, claims 90 and 97 have been amended to recite that final is when no further concentration of the virus in solution occurs. While one may have additional steps such as refrigerating the product, preparing dosages, etc., these claims recite that no further purification steps in the overall process are performed.

If necessary, applicants petition for an extension of time sufficient for consideration of this response. The commissioner hereby is authorized to charge payment of any fees under 37 CFR § 1.17, which may become due in connection with the instant application or credit any overpayment to Deposit Account No.500933.

Respectfully submitted,



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Attachments: Petition for a three-Month Extension of Time

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